

No. 23-1201 (and consolidated cases)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF WISCONSIN,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and MICHAEL
S. REGAN, Administrator, United States
Environmental Protection Agency,

Respondents.

PETITIONER'S NON-BINDING STATEMENT OF ISSUES

Pursuant to this Court's order of August 4, 2023 (Dkt. 2011020), the State of Wisconsin submits this non-binding statement of issues to be raised in this review of the EPA's final rule entitled "Federal 'Good Neighbor Plan' for the 2015 Ozone National Ambient Air Quality," published in the Federal Register at 88 Fed. Reg. 36,654 (June 5, 2023).

Although Wisconsin has intervened in support of the final rule insofar as the rule requires some beneficial reductions of ozone-precursor emissions and may assist some states in attaining or maintaining the national ambient air

quality standards (*see* Dkt. 2008842, 2011090), Wisconsin nonetheless maintains that EPA's final rule is arbitrary, capricious, an abuse of discretion, and unlawful for the following reasons:

1. The final rule fails to require emissions reductions from sources in states upwind of Wisconsin as necessary to prohibit those sources from contributing significantly to exceedances of the 2015 ozone NAAQS in Wisconsin.
2. Even for the modest emissions reductions that the rule does finally require for the 2015 ozone NAAQS, the rule fails to require those reductions be implemented as expeditiously as practicable and to account for Wisconsin's current and impending obligations to demonstrate attainment or maintenance of the 2015 ozone NAAQS.
3. By failing to include adequate provisions to control emissions in states upwind of Wisconsin, thereby requiring Wisconsin to undertake measures to account for those upwind contributions, the final rule unlawfully shifts EPA's statutory obligations to Wisconsin and requires the state to implement control measures not required under the Clean Air Act.
4. By failing to require emissions reductions from mobile sources in states upwind of Wisconsin, the final rule unlawfully fails to "prohibit[] . . . any source or other type of emissions activity within the State from emitting any air pollutant," including from those sources that significantly contribute to

Wisconsin's nonattainment with the 2015 ozone NAAQS. 42 U.S.C.

§ 7410(a)(2)(D)(i), (c)(1).

Dated this 5th day of September 2023.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

s/ Gabe Johnson-Karp
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CERTIFICATE OF SERVICE

I certify that on September 5, 2023, I electronically filed the foregoing *Petitioner's Nonbinding Statement of Issues* with the clerk of court using the CM/ECF system, which will accomplish electronic notice and service for all participants who are registered CM/ECF users.

Dated this 5th day of September 2023.

Electronically signed by:

s/ Gabe Johnson-Karp
GABE JOHNSON-KARP
Assistant Attorney General